



April 4, 2003

ENGROSSED SENATE BILL No. 479

DIGEST OF SB 479 (Updated April 1, 2003 5:20 PM - DI 107)

Citations Affected: IC 5-2; IC 31-9; IC 31-14; IC 31-15; IC 34-6; IC 34-26; IC 35-33; IC 35-38; IC 35-41.

Synopsis: Protective orders. Requires the clerk of a court that issues a workplace violence restraining order to provide a copy of the order and the confidential sheet to the employer. Specifies that a workplace violence restraining order may not be issued if the dispute is related to a strike or labor dispute. Requires the division of state court administration to develop and adopt forms for no contact orders and workplace violence restraining orders. Amends the definitions of employee and employer. Requires certain language to appear on a protective order, no contact order, and workplace violence restraining order. Provides that a parent in a paternity or divorce proceeding may request a protective order against the other parent from the court in which the paternity or divorce matter is pending. Provides that a court may issue certain types of relief in a protective order before a hearing. Provides that a court may consider violation of a no contact order or a workplace violence restraining order in determining the sentence to impose for a crime. Makes technical corrections.

Effective: July 1, 2003.

Clark

(HOUSE SPONSORS — LAWSON L, BECKER)

January 21, 2003, read first time and referred to Committee on Judiciary.
February 6, 2003, amended, reported favorably — Do Pass.
February 10, 2003, read second time, ordered engrossed.
February 11, 2003, engrossed. Read third time, passed. Yeas 50, nays 0.

HOUSE ACTION

March 13, 2003, read first time and referred to Committee on Judiciary.
April 3, 2003, amended, reported — Do Pass.

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ES 479—LS 7200/DI 105+



April 4, 2003

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

ENGROSSED SENATE BILL No. 479

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-2-9-1.7 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2003]: **Sec. 1.7. As used in this chapter, "protected person"**
4 **means a person or an employer (as defined in IC 34-26-6-4)**
5 **protected under a protective order, a no contact order, or a**
6 **workplace violence restraining order.**
- 7 SECTION 2. IC 5-2-9-6, AS AMENDED BY P.L.133-2002,
8 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
9 JULY 1, 2003]: Sec. 6. (a) The clerk of a court that issues a protective
10 order, no contact order, or workplace violence restraining order shall
11 provide a copy of the order to the following:
- 12 (1) Each party.
13 (2) A law enforcement agency of the municipality in which the
14 **protected person** ~~protected by the protective order, no contact~~
15 ~~order, or workplace violence restraining order~~ resides. **If a person**
16 **and an employer are:**
17 (A) **both protected by an order under this section; and**

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(B) domiciled in different municipalities;
 the clerk shall send a copy of the order to the law enforcement
 agency of the municipality in which the person resides and the
 employer is located.

(3) If the ~~protected~~ person, ~~protected by the protective order, no~~
~~contact order, or workplace violence restraining order does~~
~~including an employer, is not reside~~ domiciled in a municipality,
 the sheriff of the county in which the protected person resides.

(b) The clerk of a court that issues a protective order, no contact
 order, or workplace violence restraining order or the clerk of a court in
 which a petition is filed shall:

(1) maintain a confidential file to secure any confidential
 information about a protected person designated on a uniform
 statewide form prescribed by the division of state court
 administration; ~~and~~

(2) provide a copy of the confidential form that accompanies the
 protective order, no contact order, or workplace violence
 restraining order to the following:

(A) The sheriff of the county in which the protective order, no
 contact order, or workplace violence restraining order was
 issued.

(B) The law enforcement agency of the municipality, if any, in
 which the protected person, ~~resides:~~ **including an employer,**
is domiciled.

(C) Any other sheriff or law enforcement agency designated in
 the protective order, no contact order, or workplace violence
 restraining order that has jurisdiction over the area in which a
 protected person, **including an employer,** may be located or
 protected; **and**

(3) after receiving the return of service information, transmit
all return of service information to each sheriff and law
enforcement agency required under subdivision (2).

(c) A sheriff or law enforcement agency that receives a protective
 order, no contact order, or workplace violence restraining order under
 subsection (a) and a confidential form under subsection (b) shall:

(1) maintain a copy of the protective order, no contact order, or
 workplace violence restraining order in the depository established
 under this chapter;

(2) enter:

(A) the date and time the sheriff or law enforcement agency
 receives the protective order, no contact order, or workplace
 violence restraining order;

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- 1 (B) the location of the person who is subject to the protective
 2 order, no contact order, or workplace violence restraining
 3 order, if reasonably ascertainable from the information
 4 received;
 5 (C) the name and identification number of the officer who
 6 serves the protective order, no contact order, or workplace
 7 violence restraining order;
 8 (D) the manner in which the protective order, no contact order,
 9 or workplace violence restraining order is served;
 10 (E) the name of the petitioner and any other protected parties;
 11 (F) the name, Social Security number, date of birth, and
 12 physical description of the person who is the subject of the
 13 protective order, no contact order, or workplace violence
 14 restraining order, if reasonably ascertainable from the
 15 information received;
 16 (G) the date the protective order, no contact order, or
 17 workplace violence restraining order expires;
 18 (H) a caution indicator stating whether a person who is the
 19 subject of the protective order, no contact order, or workplace
 20 violence restraining order is believed to be armed and
 21 dangerous, if reasonably ascertainable from the information
 22 received; and
 23 (I) if furnished, a Brady record indicator stating whether a
 24 person who is the subject of the protective order, no contact
 25 order, or workplace violence restraining order is prohibited
 26 from purchasing or possessing a firearm or ammunition under
 27 federal law, if reasonably ascertainable from the information
 28 received;
 29 on the copy of the protective order, no contact order, or workplace
 30 violence restraining order or the confidential form; and
 31 (3) establish a confidential file in which a confidential form that
 32 contains information concerning a protected person is kept.
 33 (d) A protective order, no contact order, or workplace violence
 34 restraining order may be removed from the depository established
 35 under this chapter only if the sheriff or law enforcement agency that
 36 administers the depository receives:
 37 (1) a notice of termination on a form prescribed or approved by
 38 the division of state court administration;
 39 (2) an order of the court; or
 40 (3) a notice of termination and an order of the court.
 41 (e) If a protective order, no contact order, or workplace violence
 42 restraining order in a depository established under this chapter is

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1 terminated, the person who obtained the order must file a notice of
 2 termination on a form prescribed or approved by the division of state
 3 court administration with the clerk of the court. The clerk of the court
 4 shall provide a copy of the notice of termination of a protective order,
 5 no contact order, or workplace violence restraining order to each of the
 6 depositories to which the protective order, no contact order, or
 7 workplace violence restraining order and a confidential form were sent.
 8 The clerk of the court shall maintain the notice of termination in the
 9 court's file.

10 (f) If a protective order, no contact order, or workplace violence
 11 restraining order or form in a depository established under this chapter
 12 is extended or modified, the person who obtained the extension or
 13 modification must file a notice of extension or modification on a form
 14 prescribed or approved by the division of state court administration
 15 with the clerk of the court. The clerk of the court shall provide a copy
 16 of the notice of extension or modification of a protective order, no
 17 contact order, or workplace violence restraining order to each of the
 18 depositories to which the order and a confidential form were sent. The
 19 clerk of the court shall maintain the notice of extension or modification
 20 of a protective order, no contact order, or workplace violence
 21 restraining order in the court's file.

22 (g) The clerk of a court that issued an order terminating a protective
 23 order, no contact order, or workplace violence restraining order that is
 24 an ex parte order shall provide a copy of the order to the following:

- 25 (1) Each party.
- 26 (2) The law enforcement agency provided with a copy of a
 27 protective order, no contact order, or workplace violence
 28 restraining order under subsection (a).

29 SECTION 3. IC 31-9-2-42, AS AMENDED BY P.L.133-2002,
 30 SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 JULY 1, 2003]: Sec. 42. "Domestic or family violence" means, except
 32 for an act of self defense, the occurrence of one (1) or more of the
 33 following acts committed by a family or household member:

- 34 (1) Attempting to cause, threatening to cause, or causing physical
 35 harm to another family or household member without legal
 36 justification.
- 37 (2) Placing a family or household member in fear of physical
 38 harm without legal justification.
- 39 (3) Causing a family or household member to involuntarily
 40 engage in sexual activity by force, threat of force, or duress.

41 For purposes of IC 34-26-5, domestic and family violence also includes
 42 stalking (as defined in IC 35-45-10-1) or a sex offense under

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1 IC 35-42-4, **whether or not the stalking or sex offense is committed**
 2 **by a family or household member.**

3 SECTION 4. IC 31-14-16-1, AS AMENDED BY P.L.133-2002,
 4 SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 5 JULY 1, 2003]: Sec. 1. A parent may request a court to issue a
 6 protective order against the other parent to prevent domestic or family
 7 violence at any time after a final decree of paternity is issued under this
 8 article (or IC 31-6-6.1 before its repeal) if the parties have an
 9 unemancipated child. The parent must file a petition under IC 34-26-5
 10 in ~~a pending case~~, **the court in which the case is pending**, and the
 11 court may not require the moving party to give security. If the petitioner
 12 requests an ex parte protective order, the court shall immediately:

- 13 (1) review the request; and
- 14 (2) if required, set a hearing;

15 under IC 34-26-5. The procedure and law for a proceeding under this
 16 section are controlled by IC 34-26-5.

17 SECTION 5. IC 31-15-4-1, AS AMENDED BY P.L.133-2002,
 18 SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 19 JULY 1, 2003]: Sec. 1. (a) In an action for dissolution of marriage
 20 under IC 31-15-2 or legal separation under IC 31-15-3, either party
 21 may file a motion for any of the following:

- 22 (1) Temporary maintenance.
- 23 (2) Temporary support or custody of a child of the marriage
- 24 entitled to support.
- 25 (3) Possession of property.
- 26 (4) Counseling.
- 27 (5) A protective order under IC 34-26-5.

28 (b) If a party desires a protective order under subsection (a)(5), the
 29 party must file a petition under IC 34-26-5 in ~~a pending case~~, **the court**
 30 **in which the case is pending**, and the court may not require the
 31 moving party to give security. If the petitioner requests an ex parte
 32 protective order, the court shall immediately:

- 33 (1) review the request; and
- 34 (2) if required, set a hearing;

35 under IC 34-26-5. The procedure and law for a proceeding under this
 36 subsection are controlled by IC 34-26-5.

37 SECTION 6. IC 31-15-5-1, AS AMENDED BY P.L.133-2002,
 38 SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 39 JULY 1, 2003]: Sec. 1. Either party may request a protective order to
 40 prevent domestic or family violence at any time during the dissolution
 41 of marriage or legal separation action by filing a petition under
 42 IC 34-26-5 ~~with in~~ the court in **which the case is pending**. ~~case~~. The

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1 court may not require the moving party to give security. If the petitioner
2 requests an ex parte protective order, the court shall immediately:

- 3 (1) review the request; and
- 4 (2) if required, set a hearing;

5 under IC 34-26-5. The procedure and law for a proceeding under this
6 section are controlled by IC 34-26-5.

7 SECTION 7. IC 34-6-2-34.5, AS ADDED BY P.L.133-2002,
8 SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
9 JULY 1, 2003]: Sec. 34.5. "Domestic or family violence" means,
10 except for an act of self-defense, the occurrence of at least one (1) of
11 the following acts committed by a family or household member:

- 12 (1) Attempting to cause, threatening to cause, or causing physical
13 harm to another family or household member.
- 14 (2) Placing a family or household member in fear of physical
15 harm.
- 16 (3) Causing a family or household member to involuntarily
17 engage in sexual activity by force, threat of force, or duress.

18 For purposes of IC 34-26-5, domestic and family violence also includes
19 stalking (as defined in IC 35-45-10-1) or a sex offense under
20 IC 35-42-4, **whether or not the stalking or sex offense is committed**
21 **by a family or household member.**

22 SECTION 8. IC 34-26-5-3, AS ADDED BY P.L.133-2002,
23 SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
24 JULY 1, 2003]: Sec. 3. (a) The division of state court administration
25 shall:

- 26 (1) develop and adopt:
 - 27 (A) a petition for an order for protection;
 - 28 (B) an order for protection, including:
 - 29 (i) orders issued under this chapter;
 - 30 (ii) ex parte orders; ~~and~~
 - 31 (iii) no contact orders under IC 31 and IC 35; **and**
 - 32 **(iv) forms relating to workplace violence restraining**
33 **orders under IC 34-26-6;**
 - 34 (C) a confidential ~~sheet~~; **form;**
 - 35 (D) a notice of modification or extension for an order for
36 protection, **a no contact order, or a workplace violence**
37 **restraining order;**
 - 38 (E) a notice of termination for an order for protection, **a no**
39 **contact order, or a workplace violence restraining order;**
40 **and**
 - 41 (F) any other uniform statewide forms necessary to maintain
42 an accurate registry of orders; and



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(2) provide the forms under subdivision (1) to the clerk of each court authorized to issue the orders.

(b) In addition to any other required information, a petition for an order for protection must contain a statement listing each civil or criminal action involving:

(1) either party; or

(2) a child of either party.

(c) The following statements must be printed in boldface type or in capital letters on an order for protection, **a no contact order, or a workplace violence restraining order:**

VIOLATION OF THIS ORDER IS PUNISHABLE BY CONFINEMENT IN JAIL, PRISON, AND/OR A FINE.

IF SO ORDERED BY THE COURT, THE RESPONDENT IS FORBIDDEN TO ENTER OR STAY AT THE PETITIONER'S RESIDENCE, EVEN IF INVITED TO DO SO BY THE PETITIONER OR ANY OTHER PERSON. IN NO EVENT IS THE ORDER FOR PROTECTION VOIDED.

PURSUANT TO 18 U.S.C. 2265, THIS ORDER FOR PROTECTION SHALL BE GIVEN FULL FAITH AND CREDIT IN ANY OTHER STATE OR TRIBAL LAND AND SHALL BE ENFORCED AS IF IT WERE AN ORDER ISSUED IN THAT STATE OR TRIBAL LAND. PURSUANT TO 18 U.S.C. 922(g), ONCE A RESPONDENT HAS RECEIVED NOTICE OF THIS ORDER AND AN OPPORTUNITY TO BE HEARD, IT IS A FEDERAL VIOLATION TO PURCHASE, RECEIVE, OR POSSESS A FIREARM WHILE SUBJECT TO THIS ORDER IF THE PROTECTED PERSON IS:

(A) THE RESPONDENT'S CURRENT OR FORMER SPOUSE;

(B) A CURRENT OR FORMER PERSON WITH WHOM THE RESPONDENT RESIDED WHILE IN AN INTIMATE RELATIONSHIP; OR

(C) A PERSON WITH WHOM THE RESPONDENT HAS A CHILD.

INTERSTATE VIOLATION OF THIS ORDER MAY SUBJECT THE RESPONDENT TO FEDERAL CRIMINAL PENALTIES UNDER 18 U.S.C. 2261 AND 18 U.S.C. 2262.

(d) The clerk of the circuit court, or a person or entity designated by the clerk of the circuit court, shall provide to a person requesting an order for protection:

(1) the forms adopted under subsection (a);

(2) all other forms required to petition for an order for protection,

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including forms:

(A) necessary for service; and

(B) required under IC 31-17-3; and

(3) clerical assistance in reading or completing the forms and filing the petition.

Clerical assistance provided by the clerk or court personnel under this section does not constitute the practice of law. The clerk of the circuit court may enter into a contract with a person or another entity to provide this assistance.

(e) A petition for an order for protection must be:

(1) verified or under oath under Trial Rule 11; and

(2) issued on the forms adopted under subsection (a).

(f) If an order for protection is issued under this chapter, the clerk shall comply with IC 5-2-9.

SECTION 9. IC 34-26-5-6, AS ADDED BY P.L.133-2002, SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 6. The following rules apply to an order for protection issued under this chapter:

(1) An order for protection is in addition to, and not instead of, another available civil or criminal proceeding.

(2) A petitioner is not barred from seeking an order because of another pending proceeding.

(3) A court may not delay granting relief because of the existence of a pending action between the petitioner and respondent.

(4) If a person who petitions for an ex parte order for protection also has a pending case involving:

(A) the respondent; or

(B) a child of the petitioner and respondent;

the court that has been petitioned for relief shall immediately consider the ex parte petition and then transfer that matter to the court in which the other case is pending.

(5) If a person files a petition for an order of protection requesting relief that:

(A) does not require a hearing under sections 9(b) and 10(a) of this chapter; and

(B) requires a hearing under sections 9(c) and 10(b) of this chapter;

the court may issue an ex parte order for protection providing relief under clause (A) at any time before the required hearing under clause (B).

SECTION 10. IC 34-26-5-7, AS ADDED BY P.L.133-2002, SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2003]: Sec. 7. A petitioner may omit the petitioner's address from all nonconfidential documents filed with a court. However, a petitioner must provide the court with complete information concerning the protected address on the uniform statewide confidential ~~sheet~~ **form** and on other confidential forms developed by the division of state court administration under section 3 of this chapter. A petitioner shall also provide the clerk with a public mailing address for purposes of serving pleadings, notices, and court orders. The petitioner may use the address confidentiality program under IC 5-26.5. If disclosure of a petitioner's address is necessary to determine jurisdiction or to consider venue, the court may order the disclosure to be made:

- (1) after receiving a petitioner's consent;
- (2) orally in the judge's chambers and out of the presence of a respondent with a sealed record made; or
- (3) after a hearing in which the court considers the safety of a petitioner and finds that disclosure of the address is in the interest of justice.

SECTION 11. IC 34-26-6-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 0.5. This chapter does not apply to a case involving or growing out of a labor dispute covered by IC 22-6-1.**

SECTION 12. IC 34-26-6-3, AS ADDED BY P.L.133-2002, SECTION 57, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. As used in this chapter, "employee" means:

- (1) ~~an employee (as defined in IC 22-2-2-3);~~ **a person employed or permitted to work or perform a service for remuneration;**
- (2) a member of a board of directors for a private, public, or quasi-public corporation;
- (3) an elected or appointed public officer; and
- (4) a volunteer or an independent contractor who performs services for an employer at the employer's place of work.

SECTION 13. IC 34-26-6-4, AS ADDED BY P.L.133-2002, SECTION 57, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. As used in this chapter, "employer" means:

- (1) ~~a person defined as an employer under IC 22-2-2-3;~~ **an individual;**
- (2) ~~a federal agency;~~ **partnership;**
- (3) **an association;**
- (4) **a limited liability company;**
- (5) **a corporation;**
- (6) **a business trust;**



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- ~~(3)~~ (7) the state;
- ~~(4)~~ a state agency;
- ~~(5)~~ a city;
- ~~(6)~~ a county;
- (7) a private, public, or quasi-public corporation or a public agency; and
- ~~(8)~~ a public agency operating wholly within or as part of a public or quasi-public corporation.
- (8) a governmental agency; or**
- (9) a political subdivision;**

that has at least two (2) employees during any work week.

SECTION 14. IC 34-26-6-14, AS ADDED BY P.L.133-2002, SECTION 57, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 14. A filing fee may not be charged for a petition that alleges that a person has:

- (1) inflicted or threatened violence against an employee of the ~~petitioner~~; **plaintiff**;
- (2) stalked an employee of the ~~petitioner~~; **plaintiff**; or
- (3) spoken in a manner that has placed an employee in reasonable fear of violence;

and that seeks a temporary restraining order or an injunction to restrain future violence or threats of violence. A filing fee may not be charged for a responsive pleading described under section 8 of this chapter.

SECTION 15. IC 35-33-1-1, AS AMENDED BY P.L.133-2002, SECTION 59, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) A law enforcement officer may arrest a person when the officer has:

- (1) a warrant commanding that the person be arrested;
- (2) probable cause to believe the person has committed or attempted to commit, or is committing or attempting to commit, a felony;
- (3) probable cause to believe the person has violated the provisions of IC 9-26-1-1(1), IC 9-26-1-1(2), IC 9-26-1-2(1), IC 9-26-1-2(2), IC 9-26-1-3, IC 9-26-1-4, or IC 9-30-5;
- (4) probable cause to believe the person is committing or attempting to commit a misdemeanor in the officer's presence;
- (5) probable cause to believe the person has committed a:
 - (A) battery resulting in bodily injury under IC 35-42-2-1; or
 - (B) domestic battery under IC 35-42-2-1.3.

The officer may use an affidavit executed by an individual alleged to have direct knowledge of the incident alleging the elements of the offense of battery to establish probable cause;



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(6) probable cause to believe that the person violated IC 35-46-1-15.1 (invasion of privacy);

(7) probable cause to believe that the person violated IC 35-47-2-1 (carrying a handgun without a license) or IC 35-47-2-22 (counterfeit handgun license); ~~or~~

(8) probable cause to believe that the person is violating or has violated an order issued under IC 35-50-7; ~~or~~

(9) probable cause to believe that the person is:

(A) violating or has violated IC 35-45-2-5 (interference with the reporting of a crime); and

(B) interfering with or preventing the reporting of a crime involving domestic or family violence (as defined in IC 34-6-2-34.5).

(b) A person who:

(1) is employed full time as a federal enforcement officer;

(2) is empowered to effect an arrest with or without warrant for a violation of the United States Code; and

(3) is authorized to carry firearms in the performance of the person's duties;

may act as an officer for the arrest of offenders against the laws of this state where the person reasonably believes that a felony has been or is about to be committed or attempted in the person's presence.

SECTION 16. IC 35-38-1-7.1, AS AMENDED BY P.L.133-2002, SECTION 61, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7.1. (a) In determining what sentence to impose for a crime, the court shall consider:

(1) the risk that the person will commit another crime;

(2) the nature and circumstances of the crime committed;

(3) the person's:

(A) prior criminal record;

(B) character; and

(C) condition;

(4) whether the victim of the crime was less than twelve (12) years of age or at least sixty-five (65) years of age;

(5) whether the person committed the offense in the presence or within hearing of a person who is less than eighteen (18) years of age who was not the victim of the offense;

(6) whether the person violated a protective order issued against the person under ~~IC 31-15~~, ~~IC 31-16~~, ~~or~~ IC 34-26-5 (or IC 31-1-11.5, IC 34-26-2, or IC 34-4-5.1 before their repeal), **a workplace violence restraining order issued against the person under IC 34-26-6, or a no contact order issued against**

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1 **the person; and**

2 (7) any oral or written statement made by a victim of the crime.

3 (b) The court may consider the following factors as aggravating
4 circumstances or as favoring imposing consecutive terms of
5 imprisonment:

6 (1) The person has recently violated the conditions of any
7 probation, parole, or pardon granted to the person.

8 (2) The person has a history of criminal or delinquent activity.

9 (3) The person is in need of correctional or rehabilitative
10 treatment that can best be provided by commitment of the person
11 to a penal facility.

12 (4) Imposition of a reduced sentence or suspension of the
13 sentence and imposition of probation would depreciate the
14 seriousness of the crime.

15 (5) The victim of the crime was less than twelve (12) years of age
16 or at least sixty-five (65) years of age.

17 (6) The victim of the crime was mentally or physically infirm.

18 (7) The person committed a forcible felony while wearing a
19 garment designed to resist the penetration of a bullet.

20 (8) The person committed a sex crime listed in subsection (e) and:

21 (A) the crime created an epidemiologically demonstrated risk
22 of transmission of the human immunodeficiency virus (HIV)
23 and involved the sex organ of one (1) person and the mouth,
24 anus, or sex organ of another person;

25 (B) the person had knowledge that the person was a carrier of
26 HIV; and

27 (C) the person had received risk counseling as described in
28 subsection (g).

29 (9) The person committed an offense related to controlled
30 substances listed in subsection (f) if:

31 (A) the offense involved:

32 (i) the delivery by any person to another person; or

33 (ii) the use by any person on another person;

34 of a contaminated sharp (as defined in IC 16-41-16-2) or other
35 paraphernalia that creates an epidemiologically demonstrated
36 risk of transmission of HIV by involving percutaneous contact;

37 (B) the person had knowledge that the person was a carrier of
38 the human immunodeficiency virus (HIV); and

39 (C) the person had received risk counseling as described in
40 subsection (g).

41 (10) The person committed the offense in an area of a
42 consolidated or second class city that is designated as a public

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1 safety improvement area by the Indiana criminal justice institute
2 under IC 36-8-19.5.

3 (11) The injury to or death of the victim of the crime was the
4 result of shaken baby syndrome (as defined in IC 16-41-40-2).

5 (12) Before the commission of the crime, the person administered
6 to the victim of the crime, without the victim's knowledge, a
7 sedating drug or a drug that had a hypnotic effect on the victim,
8 or the person had knowledge that such a drug had been
9 administered to the victim without the victim's knowledge.

10 (13) The person:

11 (A) committed trafficking with an inmate under IC 35-44-3-9;
12 and

13 (B) is an employee of the penal facility.

14 (14) The person committed the offense in the presence or within
15 hearing of a person who is less than eighteen (18) years of age
16 who was not the victim of the offense.

17 (c) The court may consider the following factors as mitigating
18 circumstances or as favoring suspending the sentence and imposing
19 probation:

20 (1) The crime neither caused nor threatened serious harm to
21 persons or property, or the person did not contemplate that it
22 would do so.

23 (2) The crime was the result of circumstances unlikely to recur.

24 (3) The victim of the crime induced or facilitated the offense.

25 (4) There are substantial grounds tending to excuse or justify the
26 crime, though failing to establish a defense.

27 (5) The person acted under strong provocation.

28 (6) The person has no history of delinquency or criminal activity,
29 or the person has led a law-abiding life for a substantial period
30 before commission of the crime.

31 (7) The person is likely to respond affirmatively to probation or
32 short term imprisonment.

33 (8) The character and attitudes of the person indicate that the
34 person is unlikely to commit another crime.

35 (9) The person has made or will make restitution to the victim of
36 the crime for the injury, damage, or loss sustained.

37 (10) Imprisonment of the person will result in undue hardship to
38 the person or the dependents of the person.

39 (11) The person was convicted of a crime involving the use of
40 force against a person who had repeatedly inflicted physical or
41 sexual abuse upon the convicted person and evidence shows that
42 the convicted person suffered from the effects of battery as a

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1 result of the past course of conduct of the individual who is the
2 victim of the crime for which the person was convicted.

3 (d) The criteria listed in subsections (b) and (c) do not limit the
4 matters that the court may consider in determining the sentence.

5 (e) For the purposes of this article, the following crimes are
6 considered sex crimes:

- 7 (1) Rape (IC 35-42-4-1).
- 8 (2) Criminal deviate conduct (IC 35-42-4-2).
- 9 (3) Child molesting (IC 35-42-4-3).
- 10 (4) Child seduction (IC 35-42-4-7).
- 11 (5) Prostitution (IC 35-45-4-2).
- 12 (6) Patronizing a prostitute (IC 35-45-4-3).
- 13 (7) Incest (IC 35-46-1-3).
- 14 (8) Sexual misconduct with a minor under IC 35-42-4-9(a).

15 (f) For the purposes of this article, the following crimes are
16 considered offenses related to controlled substances:

- 17 (1) Dealing in or manufacturing cocaine, a narcotic drug, or
18 methamphetamine (IC 35-48-4-1).
- 19 (2) Dealing in a schedule I, II, or III controlled substance
20 (IC 35-48-4-2).
- 21 (3) Dealing in a schedule IV controlled substance (IC 35-48-4-3).
- 22 (4) Dealing in a schedule V controlled substance (IC 35-48-4-4).
- 23 (5) Possession of cocaine, a narcotic drug, or methamphetamine
24 (IC 35-48-4-6).
- 25 (6) Possession of a controlled substance (IC 35-48-4-7).
- 26 (7) Dealing in paraphernalia (IC 35-48-4-8.5).
- 27 (8) Possession of paraphernalia (IC 35-48-4-8.3).
- 28 (9) Offenses relating to registration (IC 35-48-4-14).

29 (g) For the purposes of this section, a person received risk
30 counseling if the person had been:

- 31 (1) notified in person or in writing that tests have confirmed the
32 presence of antibodies to the human immunodeficiency virus
33 (HIV) in the person's blood; and
- 34 (2) warned of the behavior that can transmit HIV.

35 SECTION 17. IC 35-41-1-10.6 IS ADDED TO THE INDIANA
36 CODE AS A NEW SECTION TO READ AS FOLLOWS
37 [EFFECTIVE JULY 1, 2003]: **Sec. 10.6. (a) An individual is a**
38 **"family or household member" of another person if the individual:**

- 39 **(1) is a current or former spouse of the other person;**
- 40 **(2) is dating or has dated the other person;**
- 41 **(3) is or was engaged in a sexual relationship with the other**
42 **person;**



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- 1 **(4) is related by blood or adoption to the other person;**
2 **(5) is or was related by marriage to the other person;**
3 **(6) has or previously had an established legal relationship:**
4 **(A) as a guardian of the other person;**
5 **(B) as a ward of the other person;**
6 **(C) as a custodian of the other person;**
7 **(D) as a foster parent of the other person; or**
8 **(E) in a capacity with respect to the other person similar to**
9 **those listed in clauses (A) through (D); or**
10 **(7) has a child in common with the other person.**
11 **(b) An individual is a "family or household member" of both**
12 **persons to whom subsection (a)(1), (a)(2), (a)(3), (a)(4), (a)(5),**
13 **(a)(6), or (a)(7) applies if the individual is a minor child of one (1)**
14 **of the persons.**

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COMMITTEE REPORT

Mr. President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 479, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 5, delete lines 3 through 24.

Page 7, delete lines 2 through 23.

Page 10, between lines 19 and 20, begin a new paragraph and insert:

"SECTION 11. IC 34-26-6-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 0.5. This chapter does not apply to a case involving or growing out of a labor dispute covered by IC 22-6-1.**"

Page 14, delete lines 27 through 42, begin a new paragraph and insert:

"SECTION 15. IC 35-41-1-10.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 10.6. (a) An individual is a "family or household member" of another person if the individual:**

- (1) is a current or former spouse of the other person;**
- (2) is dating or has dated the other person;**
- (3) is or was engaged in a sexual relationship with the other person;**
- (4) is related by blood or adoption to the other person;**
- (5) is or was related by marriage to the other person;**
- (6) has or previously had an established legal relationship:**
 - (A) as a guardian of the other person;**
 - (B) as a ward of the other person;**
 - (C) as a custodian of the other person;**
 - (D) as a foster parent of the other person; or**
 - (E) in a capacity with respect to the other person similar to those listed in clauses (A) through (D); or**
- (7) has a child in common with the other person.**

(b) An individual is a "family or household member" of both persons to whom subsection (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), or (a)(7) applies if the individual is a minor child of one (1) of the persons."

Delete page 15.

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Renumber all SECTIONS consecutively.
and when so amended that said bill do pass.

(Reference is to SB 479 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 9, Nays 0.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 479, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 16, after "and" insert "**an**".

Page 2, line 32, delete "subsection (b)(2)" and insert "**subdivision (2).**".

Page 5, line 1, after "IC 35-42-4" insert ",."

Page 6, line 20, after "IC 35-42-4" insert ",."

Page 9, line 36, strike "a person".

Page 9, line 36, delete "(as)".

Page 9, line 36, strike "defined".

Page 9, line 36, delete "in" and insert "**an individual;**".

Page 9, delete lines 37 through 38.

Page 9, line 39, strike "federal agency;" and insert "**partnership;**

(3) an association;

(4) a limited liability company;

(5) a corporation;

(6) a business trust;".

Page 9, line 40, strike "(3)" and insert "(7)".

Page 10, line 2, delete "(4)".

Page 10, line 2, strike "a private, public, or quasi-public corporation or a public".

Page 10, strike line 3.

Page 10, line 4, delete "(5)".

Page 10, line 4, strike "a public agency operating wholly within or as part of a".

Page 10, strike line 5, begin a new line block indented and insert:

"(8) a governmental agency; or

(9) a political subdivision;

that has at least two (2) employees during any work week."

Page 10, between lines 17 and 18, begin a new paragraph and insert:
"SECTION 15. IC 35-33-1-1, AS AMENDED BY P.L.133-2002, SECTION 59, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) A law enforcement officer may arrest a person when the officer has:

(1) a warrant commanding that the person be arrested;

(2) probable cause to believe the person has committed or attempted to commit, or is committing or attempting to commit, a felony;

(3) probable cause to believe the person has violated the provisions

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of IC 9-26-1-1(1), IC 9-26-1-1(2), IC 9-26-1-2(1), IC 9-26-1-2(2), IC 9-26-1-3, IC 9-26-1-4, or IC 9-30-5;

(4) probable cause to believe the person is committing or attempting to commit a misdemeanor in the officer's presence;

(5) probable cause to believe the person has committed a:

(A) battery resulting in bodily injury under IC 35-42-2-1; or

(B) domestic battery under IC 35-42-2-1.3.

The officer may use an affidavit executed by an individual alleged to have direct knowledge of the incident alleging the elements of the offense of battery to establish probable cause;

(6) probable cause to believe that the person violated IC 35-46-1-15.1 (invasion of privacy);

(7) probable cause to believe that the person violated IC 35-47-2-1 (carrying a handgun without a license) or IC 35-47-2-22 (counterfeit handgun license); ~~or~~

(8) probable cause to believe that the person is violating or has violated an order issued under IC 35-50-7; **or**

(9) probable cause to believe that the person is:

(A) violating or has violated IC 35-45-2-5 (interference with the reporting of a crime); and

(B) interfering with or preventing the reporting of a crime involving domestic or family violence (as defined in IC 34-6-2-34.5).

(b) A person who:

(1) is employed full time as a federal enforcement officer;

(2) is empowered to effect an arrest with or without warrant for a violation of the United States Code; and

(3) is authorized to carry firearms in the performance of the person's duties;

may act as an officer for the arrest of offenders against the laws of this state where the person reasonably believes that a felony has been or is about to be committed or attempted in the person's presence."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 479 as printed February 7, 2003.)

LAWSON L, Chair

Committee Vote: yeas 13, nays 0.

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